

REMARKS

Applicants express appreciation to the Examiner for the interview of May 19, 2010. Claims 1-11 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Publication No. 2004/00111040 to Ni et al. ("Ni"). Claims 12-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ni. In response, independent claims 1-2, 5-6, and 9 are being amended and claims 3-4, 7-8, and 10-16 are being cancelled. New dependent claims 26 and 27 are being added.

Consistent with the discussion during the interview of May 19, 2010, claims 1, 5, and 9 are being amended to particularly claim the correlation of cardiovascular condition and patient breathing and associated treatment as well as to include the particular device being used within the method.

In summary, all claims stand rejected based upon Ni. However, Ni and the present invention are directed to solving completely different problems and each is directed to a completely different solution. Ni is directed to detecting sleep disordered breathing and does so by using a device to sense parameters indicative of sleep disordered breathing. "Various embodiments of present invention involve detecting disordered breathing ... disordered breathing is detected using the one or more sensed signals." (Ni ¶ 0007).

The present invention is directed to monitoring a patient's cardiovascular condition during treatment for sleep disordered breathing and correlating changes in the cardiovascular condition of the patient to the patient's breathing and associated therapy. That is, in the present invention, the patient had previously been diagnosed as having sleep disordered breathing (potentially, but not necessarily, using the Ni

method), is being treated for sleep disordered breathing and, in connection with the treatment and as per the present invention, is being monitored for cardiovascular disease. Detecting sleep disordered breathing is completely different from monitoring cardiovascular condition.

The Office Action includes several citations to Ni, but none is directed to monitoring a patient for cardiovascular disease while treating the patient for sleep disordered breathing and correlating these to one another or to treatment. The Office Action citations include:

Paragraph 0050 (cited in rejections of claims 1, 5, and 13) is directed to detecting disordered breathing using an implantable or external device, but not to determining cardiovascular disease.

Paragraph 0052 (cited in rejections of claims 1, 5, 9-11, and 14-16) refers to a representative sample of signals which may be captured and which are indicative of sleep disordered breathing. The paragraph does not discuss methods for determining cardiovascular disease.

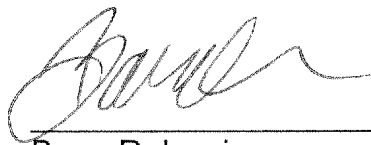
Paragraph 0053 (cited in rejections of claims 1, 3-5, and 7-11) is directed to “a set of sleep-related signals [which] may be used for sleep detection” and does not discuss detecting cardiovascular disease.

Paragraph 0054 (cited in rejections of claims 2 and 6) similarly refers only to detecting sleep disordered breathing conditions such as an apnea or a hypopnea, but not to monitoring cardiovascular disease.

Paragraph 0056 (cited in rejections of claims 1, 3-5, 7-8, and 12) details attributes of a disordered breathing detector without mentioning cardiovascular disease.

The allowance of claims 1-2, 5-6, 9, and 26-27 and the early passage to issue of the application are respectfully requested.

Respectfully submitted,
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